

IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

CHARLES WHITNEY,

Plaintiff

v.

T. FERGERSON, ET AL.,

Defendants

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CIVIL NO. 3:CV-17-562

(Judge Conaboy)

FILED
SCRANTON

APR 25 2017

MEMORANDUM
Background

Per C92
DEPUTY CLERK

Charles Whitney (Plaintiff), an inmate presently confined at the Benner Township State Correctional Institution, Bellefonte, Pennsylvania (SCI-Benner), initiated this pro se civil rights action pursuant to 42 U.S.C. § 1983. His Complaint raises allegations of being subjected to mail interference, denial of recreation, falsified misconduct charges, excessive force, unconstitutional conditions of confinement, and sexual harassment while housed at SCI-Benner. By Administrative Order dated April 5, 2017, Plaintiff was directed to either pay the required filing fee or submit a proper in forma pauperis application and authorization form.

In a recently filed document dated April 9, 2017, Plaintiff states that he "move to withdraw this civil acttion in [sic] prusant to Fed. R. Civ. P. 41(a)(1)." Doc. 5, p. 1. Whitney indicates that he wishes to file a new action which includes additional claims.

Discussion

Federal Rule of Civil Procedure 41(a) states in relevant part:

(a) **Voluntary Dismissal.**

(1) **By the Plaintiff.**


- (A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 66, and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:
 - (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment, or
 - (ii) a stipulation of dismissal signed by all parties who have appeared.
- (B) *Effect.* Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal or state court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

Since service of Plaintiff's action has not been ordered, Defendants have neither filed an answer nor a summary judgment motion. In light of the liberal treatment afforded pro se submissions,¹ Plaintiff's filing, which asks that his pending action be withdrawn, will be construed as a notice of voluntary dismissal under Rule 41(a)(1)(A)(i).

Based upon Whitney's submission of a notice of dismissal under Rule 41(a)(1)(A)(i), his case will be dismissed without prejudice. However, Plaintiff is notified that renewal of his civil rights claims is subject to Pennsylvania's statute of

1. See Haines v. Kerner, 404 U.S. 519, 520 (1972).

limitations for a personal injury action.² See Owens v. Okure, 488 U.S. 235, 250 (1989); Cito v. Bridgewater Twp. Police Dep't, 892 F.2d 23, 25 (3d Cir. 1989). An appropriate Order will enter.



RICHARD P. CONABOY
United States District Judge

DATED: APRIL 12th, 2017

2. Pennsylvania's applicable personal injury statute of limitations is two years. See 42 Pa. Cons. Stat. Ann. § 5524(7) (Purdon Supp. 1996); Kost v. Kozakiewicz, 1 F.3d 176, 190 (3d Cir. 1993)